

PART 612—AVAILABILITY OF RECORDS AND INFORMATION

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AUTHORITY: 5 U.S.C. 552, as amended.

§612.1 Scope.

This part establishes procedures by which the National Science Foundation (NSF) will implement the Freedom of Information Act, 5 U.S.C. 552(a), relating to public availability of NSF records.

[56 FR 47415, Sept. 19, 1991]

§612.2 Information policy.

(a) Subject to the policies set forth below, NSF will make the fullest possible disclosure of information to any person who requests information, without unnecessary expenses or delay. The Inspector General (concerning records maintained by the Office of Inspector General) or the Deputy Director (concerning all other NSF records) may, except where prohibited by law, order disclosure in the public interest of records exempt from mandatory disclosure under §612.8 of this part.

(b) A collection of NSF policy documents, staff instructions, and of agency opinions and orders in the adjudication of cases, with respective indices, shall be physically located in the National Science Foundation library at 4201 Wilson Boulevard, Arlington, VA, where they will be available for inspection by the public during regular working hours on Monday through Friday. Copies of such documents shall be furnished in accordance with these regulations.

(c) The Director, Office of Information and Resource Management (D/IRM) shall be responsible for maintaining, publishing, distributing and making available for inspection and copying the current indexes and supplements thereto which are required by 5 U.S.C. 552(a)(2). Such indexes shall promptly be published, quarterly or more frequently, unless the D/IRM determines by order published in the FEDERAL REGISTER that the publication would be unnecessary. The fee for furnishing copies of indexes and supplements shall not exceed the direct cost of duplication.

[40 FR 12793, Mar. 21, 1975, as amended at 49 FR 23049, June 4, 1984; 49 FR 37595, Sept. 25, 1984; 56 FR 47416, Sept. 19, 1991; 59 FR 37437, 37438, July 22, 1994]

§612.3 Procedures applicable to the public—requests and appeals.

(a) *Publications excluded.* For the purpose of public requests for records the term *record* does not include publications which are available to the public in the FEDERAL REGISTER, or by sale or free distribution. Such publications may be obtained from the Government Printing Office, the National Technical Information Service, the NSF Forms and Publications Unit or NSF grantees or contractors. Requests for such publications will be referred to or the requester informed of the appropriate source. The booklet, *Publications of the National Science Foundation*, which is available without charge from Forms and Publications, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, identifies Annual Reports, Descriptive Brochures, Program Announcements, Science Resources Studies, Special Studies, and Periodicals descriptive of Foundation activities, policies, and procedures, sets forth the cost of each, and tells how copies may be obtained.

(b) *Form of request.* A request need not be in any particular format, but it: (1) Must be in writing and include the requester's mailing address, (2) must be clearly identified both on the envelope and in the letter as a Freedom of Information Act or FOIA request, (3) must

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describe the records sought with sufficient specificity to permit identification, and (4) must state that the requester promptly will pay the fees chargeable under this regulation. Provided, however, that when the requester places an inadequate limit on the amount he will pay or the requester has failed to make payments for previous requests, the NSF may require advance payment in accordance with § 612.12(d) of this part except in cases when fees have been waived or reduced in accordance with § 612.13 of this part.

(c) *Place of request.* Any request for records under FOIA shall be addressed to the National Science Foundation, Office of General Counsel, 4201 Wilson Boulevard, Arlington, VA 22230, except that requests for records maintained by the Office of the Inspector General may be addressed to either the Office of General Counsel, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 or to the Office of the Inspector General, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. A request which meets the requirements of paragraph (b) of this section and is properly addressed will be deemed received on the date of arrival in the Office of General Counsel or the Office of the Inspector General.

(d) *Time for appeal.* A person whose request has been denied or partially denied may initiate an appeal by filing a request for review within ten days of the receipt of the denial, Saturdays, Sundays, legal public holidays, and the date of receipt excluded.

(e) *Form of appeal.* The appeal shall include a copy of the written request and the denial together with any written argument the requester wishes to submit, and shall be signed by the requester.

(f) *To whom appeal is made.* An appeal shall be addressed to the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

(g) *Decisions on appeal.* Decisions on appeal shall be made by the General Counsel in writing within 20 days (excepting the date of receipt, Saturdays, Sundays, and legal public holidays) from receipt of the appeal. If the decision is in favor of the requester it shall

order the record made available promptly to the requester. If adverse to the requester in whole or in part it shall briefly state the reasons and notify the requester that he may seek judicial review of the decision pursuant to paragraph (4) of section 552(a), title 5, United States Code.

[40 FR 12793, Mar. 21, 1975, as amended at 49 FR 23049, June 4, 1984; 56 FR 47416, Sept. 19, 1991; 59 FR 37438, July 22, 1994; 61 FR 51022, Sept. 30, 1996]

§ 612.4 Copies of records.

If a requested record is to be disclosed, a copy will be furnished the requester as promptly as possible provided payment of fees has been arranged, or has been waived pursuant to § 612.13 of this part. Records will not be released for copying.

[56 FR 47416, Sept. 19, 1991]

§ 612.5 Creation of records.

A record will not be created by compiling selected items from other documents at the request of a member of the public nor will a record be created by analysis, computation or other processing specifically for the requesting party. If such analysis or computation is available in the form of a record, copies shall be made available as provided in this regulation.

[40 FR 12793, Mar. 21, 1975]

§ 612.6 Confidential commercial information—notice.

(a) *In general.* Commercial information provided to the NSF by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Definitions.* The following definitions are used in reference to this section:

Commercial information means information provided to the NSF by a submitter that arguably is protected from disclosure under section b(4) of the Freedom of Information Act, 5 U.S.C. 552(b)(4) and § 612.8(a)(4) of this part.

Submitter means any person, organization, or entity who provides commercial information, directly or indirectly, to the NSF. The term includes, but is not limited to, corporations, state governments and foreign governments.